THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NOS.6796 AND 13159 OF 1992

COMMON ORDER

Heard the respective counsels.

2. Since the subject matter in both the writ petitions is connected, they are being disposed of by this common order.

3. The property involved in both the writ petitions belongs to the endowments department.

4. W.P.No.6796/1992 is filed for a declaration that the lands in an extent of Acs.137-42 cents in Sy.Nos.81 to 88 and 171 of Peddapuram shall not be alienated without following the procedure under Section 80 of the A. P .Charitable and Religious and Endowments Act 1987 (for short 'the Act').

5. W.P.No.13159/1992 is filed by the beneficiaries alleging that they are the landless poor agricultural labourers and the pattas have been issued to them to an extent of Acs.31-34 cents in Sy.No.171 of Peddapuram and they constructed permanent houses in the house sites and as the petitioners in W.P.No.6796/1992 and other were interfering with their peaceful possession, sought for a direction not to interfere with the construction of permanent houses in the house sites which were allotted to them.

6. This court on 27.5.1992 in W.P.M.P.Nos.8447 and 8446 of 1992 in W.P.No.6796 of 1992 while admitting the writ petition granted interim stay of distribution of land to an extent of Acs.31-42 cents in S.No.171 of Peddapuram for house sites pending disposal of the writ petition and also directed the respondents not to dispossess the members of the petitioners' – society for the said land.

7. This court in WPMP.NO.16563/1992 in W.P.No.13159/1992 passed interim order dated 13.10.1992 directing that if there are any temporary structures existing on the land in question, the same shall not be demolished pending further orders.

8. The case of the petitioner in W.P.No.6796/1992 which is Sri Satya Devi Small Farmers Society, Peddapuram (for short 'the society') is that the land in an extent of Acs.137-42 cents in Sy.Nos.81 to 88 and 171 belonging to S.R.V.B.S. Choultry, Peddapuram (for short 'the choultry) was leased out to the petitioner – society in the year 1977 and the members of the society who are 56 in number were cultivating the same on an annual rent of Rs.8,000/- and there has been no default in payment of rent. After the promulgation of the Act, as there was move to give away the land for house sites, the members of the society made representation to the District Collector on 6.11.1987. While so, on 12.5.1992 there was 'tom tom' in the village stating that nobody shall enter into the land in Sy.No.171 to an extent of Acs.31-42 cents and on enquiries the members of the society came to know that the said land has been proposed for conveyance to the Government by private negotiations and the possession was recorded to be taken on 12.5.1992, for being allotted as house sites. It is stated that as per A.P. (Andhra Area) Tenancy Act 1956 as amended by the Amendment Act of 1974, the tenancy rights are in perpetuity and as per Section 12 of the said Act the tenant has got a right of first purchase in the event of a proposal for sale of the land under lease. Section 82 of the Act abolished all the leases of the lands belonging to endowments and this court in ***S.NARAYANA vs STATE OF A.P.***[1] struck down the said provision and while referring to Section 80 of the Act held that where there is a tenant upon the land proposed to be sold, the Commissioner shall give notice of the proposal to such tenant, give him an opportunity of submitting his objections and suggestions and consider them before taking a final decision. The main grievance of the petitioner – society is that they are the persons in possession of the land and are interested in the property, which is sought to be sold by the Endowments Department and as per Section 80 of the Act, the Commissioner of Endowments shall have to issue notice to them inviting objections and suggestions and after considering them, shall take final decision. As the said notice was not issued to them, the act on the part of the respondents in alienating the property is illegal.

9. Alleging that the Revenue Department has paid an amount of

Rs.6,28,000/- to the Choultry and took possession of the land on 12.5.1992 under panchanama and the Mandal Revenue Officer, Peddapuram issued pattas to 600 poor agricultural labourers and the then Minister for Endowments distributed the pattas to the petitioners and others in public meeting on 24.4.1992 and pursuant to the same they constructed permanent structures and the petitioners in W.P.No.6796/1992 are interfering with their possession and therefore they filed W.P.No.13159/1992 for a direction not to interfere with their possession.

10. The Mandal Revenue Officer, Peddapuram filed counter in W.P.No.13159/1992 and while narrating the facts with regard to the lands in Sy.Nos.81 to 88 and 171 to an extent of Acs.137-42 of Peddapuram belonging to the choultry being leased out to Sannakaru Rythu Sangam of Peddapuram and the splinter group forming into the present society (i.e., Sri Satya Devi Small Farmers Society) and cultivating the land in Acs.31-42 cents in S.No.171 on sub lease and the Endowments Department filing suit in A.T.C.No.27/1990 on the file of Principle District Munsif Court, Peddapuram under Section 13 of A. P. Tenancy Act for eviction and subsequently the land being acquired by the Revenue Department by paying an amount of Rs.6,28,400/- to the Executive Officer of the Choultry, stated that only pattas were distributed and possession was not given and the petitioners have not made any temporary constructions. It is stated that the petitioner - society in W.P.No.6796/1992 obtained interim stay not to dispossess them in Sy.No.171 to an extent of Acs.31-42 pending further orders. It is further stated that pursuant to the interim stay obtained by the petitioners herein in W.P.M.P.No.16563/1992 not to demolish the temporary houses said to have been constructed by them, the Revenue Divisional Officer, Peddapuram, Mandal Revenue Officer, Peddapurm and Circle Inspector of Police, Peddapuram inspected the land in question on 28.10.1992 in the presence of the members of the society and the petitioners herein, and found no temporary houses on the land in question and hence the interim orders became infructuous. With these averments, the respondents sought for dismissal of the writ petition as there is no cause of action to file the writ petition.

11. The respondent no.4 in this writ petition i.e., in W.P.No.13159/1002

who is the petitioner in W.P.No.6796/1992 filed counter and denied the averments made in writ affidavit and also the averments made in the counter affidavit that they are in illegal occupation of the land in question and reiterated the averments made in writ affidavit in W.P.No.6796/1992.

12. The Joint Commissioner (Estates), Office of the Endowments Department, Hyderabad filed an affidavit pertaining to both the writ petitions in W.P.Nos.6796 and 13159 of 1992 stating that an extent of Acs.31-42 cents of land in Sy.No.171 was acquired by the Revenue Department in Sy.No.171 of Peddapuram village for the purpose of distributing the same to the weaker sections and the possession was taken on 12.5.1992 by conducting panchanama and also paid an amount of Rs.6,28,400/- towards compensation to the Choultry and that the writ petitioner in W.P.No.6796/1992 is the tenant of the above mentioned lands belong to the choultry. He stated that the Government issued G.O.Ms.No.379 dated 11.3.2003 issuing rules for the purpose of granting leasehold rights of the endowments agricultural lands and as per Section 82 of the Act all the leases stand cancelled with effect from 12.5.1987 and hence the tenants have no right to claim over the lands in question and that presently the leasehold rights are being granted in terms of the Rules issued above, only to such individuals who are qualified to be the landless poor. It is further stated that at the instance of the Commissioner of Endowments a report was called for and the Deputy Commissioner, Kakinada submitted report in Rc.No.A4/7834/2002 dated 27.7.2004 stating that the entire land in Acs.137.92 cents is under the enjoyment of the petitioner in W.P.No.6796/1992 on payment of nominal rent. The members of the society as a matter of fact submitted their respective representations to treat them as landless poor and same are pending consideration before the Assistant Commissioner, Endowments Department, Rajahmundry. As stay has been granted, no further steps have been taken to dispossess the petitioner in W.P.No.6796/1992 or allow the beneficiaries to reap the fruits of the land allotted to them who are beneficiaries in W.P.No.13159/1992.

13. From the narration of the above facts and as per the affidavit filed by the Joint Commissioner, the members of the petitioner – society in W.P.No.6796/1992 have been in possession of the entire extent of Acs.137-

92 cents and as per the submissions of the counsel for the petitioner – society, the Choultry filed Eviction Petition in ATC.No.27/1990 on the file of Principal District Munisf Court, Peddapuram against the society and the same was dismissed and challenging the same appeal in A.T.A.No.176/1999 was filed on the file of Principal District Judge, East Godavari District, Rajahmundry and the same is pending. Therefore, it is clear that the members of the petitioner - society have been in possession of the land in question. Though the respondents filed counter, there is no specific averment with regard to the compliance of the procedure prescribed under Section 80 of the Act by the Commissioner of Endowments before conveying the property to the Government for the purpose of allotting the same to the landless poor. Section 80 contemplates that for alienating the immovable property belonging to the Endowments Department, the Commissioner after publishing the particulars in A.P. Gazette, invite objections and suggestions with respect thereto and after considering all the objections and suggestions, if any, received from the trustee or other person having interest, accord such sanction for alienation. In the present case, no such procedure appears to have been followed.

14. Therefore, in view of the above facts and circumstances the act on the part of the respondents in alienating the property without following the procedure under Section 80 of the Act is not justifiable and the same is liable to be set aside.

15. Coming to the grievance of the petitioners in W.P.No.13159/1992 it is be seen that though no doubt they were issued pattas to the lands in question, as per the counter filed by the respondents only pattas were issued and the possession was not delivered and further when the Revenue Divisional Officer, Mandal Revenue Officer and Inspector of Police inspected the land in question on 28.10.1992 in the presence of both the parties, they found no temporary structures. On the other hand the case of the petitioners herein is that they were given possession and they made some constructions. But as per the affidavit of the Joint Commissioner of Endowments filed in both the writ petitions, the petitioner – society in W.P.No.6796/1992 is in possession of entire land in Acs.137-92 and this statement is based on the

report submitted by the Deputy Commissioner, Kakinada in Rc.No.A4/7834/2002 dated 27.7.2004. This court also granted interim direction not to dispossess the members of the petitioner – society in W.P.No.6796/1992 pending further orders. Further, this court has already found fault with the action of the respondents in alienating the property without following the procedure under Section 80 of the Act. In view of these circumstances, the prayer sought for in this writ petition cannot be granted and the same is liable to be dismissed.

16. For the foregoing reasons, the writ petition in W.P.No.6796/1992 is allowed and the respondents are directed to follow the procedure contemplated under Section 80 of the Act before alienating the lands in question. W.P.No.13159/1992 is dismissed. In the circumstances of the case, there shall be no order as to costs.

AVS ----------

--08--2006

---

[1] 1990 (1) ALT 237 (DB)